

NEW WISCONSIN TAX LAWS

EXPLANATION OF TAX PROVISIONS IN BUDGET ADJUSTMENT BILL - SENATE BILL 783

CHAPTER 317, LAWS OF 1981 - PUBLISHED APRIL 30, 1982

INCOME TAXES

1. Update Internal Revenue Code Reference to December 31, 1981 (Amend 71.02(2)(b)7, create 71.02(2)(b)8, 71.05(1)(a)11, 71.05(1)(a)12 and 71.05(1)(a)14, effective for 1982 taxable year and thereafter.)

For the 1982 taxable year and thereafter, individuals, estates and trusts will use the Internal Revenue Code in effect on December 31, 1981 with the exception that the following Internal Revenue Code provisions will not apply for Wisconsin purposes:

- (a) The deduction from gross income allowed two-earner married couples. (For federal purposes this deduction is equal to 5% of the lower-earning spouse's income for 1982 and 10% thereafter, with a maximum of \$30,000 of earned income allowed to be used to compute the deduction.) This provision of federal law was enacted in Section 103 of Public Law 97-34 (Economic Recovery Tax Act of 1981).
- (b) The exclusion from income allowed for public utility dividends which are reinvested in the common stock of the utility. This provision of federal law was enacted in Section 321 of Public Law 97-34.
- (c) Charitable contribution deductions allowed to persons who do not claim itemized deductions. This provision of federal law was enacted in Section 121 of Public Law 97-34.
- (d) The exclusion from income allowed for interest received from an "All-Savers" certificate. This provision of federal law was enacted in Section 301 of Public Law 97-34.
- (e) The incentive stock option provisions as enacted in Section 251 of Public Law 97-34.

In addition to the above differences (items a through e), Wisconsin and federal law for 1982 and thereafter will also differ with respect to the following items:

- (a) Child care expenses continue to be allowed as an itemized deduction for Wisconsin purposes.
- (b) Political contributions continue to be allowed as an itemized deduction for Wisconsin purposes.

- (c) The foreign earned income exclusion which was allowed to persons who work abroad by the provisions of the Internal Revenue Code as of December 31, 1977 continue to apply for Wisconsin purposes. (The new foreign earned income exclusion limits and deduction provisions enacted in Sections 111 and 113 of Public Law 97-34 may not be used for Wisconsin purposes.)

(NOTE: For 1981, Wisconsin law also did not recognize provisions of the Internal Revenue Code which provided an exclusion from income for benefits employees received from an employer's educational assistance plan and special write-off provisions for pollution control equipment. For taxable years 1982 and thereafter, these federal provisions will apply for Wisconsin.

For taxable years 1982 and thereafter, Wisconsin law will conform to federal law as it pertains to IRA and Keogh retirement plans. All of the changes in eligibility requirements and contribution limits which were enacted as part of federal Public Law 97-34 and took effect for federal purposes in 1982 also will now apply for Wisconsin purposes beginning in 1982.)

2. Adopt Federal 24 Month Residence Replacement Period and \$125,000 Exclusion for Home Sale Profit for 1981 (Amend 71.02(2)(b)7, effective for the 1981 taxable year and thereafter.)

A retroactive change for the taxable year 1981 is made to allow the following two provisions of the Internal Revenue Code pertaining to the sale of a personal residence to be used for Wisconsin purposes for 1981:

- (a) The 24 month residence replacement period for deferring the gain on a sale or exchange of a principal residence. (This provision in Section 122 of Public Law 97-34 applies to principal residences sold or exchanged after July 20, 1981 and also to transactions which occurred prior to that date if the previously allowed 18 month replacement period had not yet expired on July 20, 1981.)
- (b) The \$125,000 once in a lifetime exclusion for gain on the sale of a principal residence for persons age 55 or over. (This provision in Section 123 of Public Law 97-34 applies only to principal residences sold or exchanged after July 20, 1981. Transactions occurring prior to that date were subject to a \$100,000 maximum exclusion.)

(NOTE: These two federal provisions enacted in Public Law 97-34 apply retroactively to certain dates in 1981 as mentioned above, but also prospectively to 1982 taxable years and thereafter.)

3. Capital Gain Deduction Subject to Minimum Tax (Amend s. 71.60(1)(b) and (2), effective for taxable year 1982 and thereafter.)

The portion of a net long-term capital gain which is excludable from an individual's Wisconsin taxable income will constitute a tax preference item for purposes of the Wisconsin minimum tax. (Note: For Wisconsin purposes long-term capital gains are taxable as income as follows: 80% in 1982, 60% in 1983, and 40% in 1984 and thereafter.)

4. Clarify that Interest from Mass Transit and Volunteer Fire Department Bonds Which is Exempt from Federal Tax is Subject to Wisconsin Tax (Amend 71.05(1)(a)1, effective for taxable year 1982 and thereafter.)

Under existing law, s. 71.05(1)(a)1 provides that interest from municipal bonds which is exempt from federal income tax must be included in the recipient's Wisconsin income.

For federal income tax purposes, certain mass transit bonds and volunteer fire department bonds are treated as though they were municipal bonds and the interest received from such bonds may be excluded from the recipient's federal adjusted gross income. This change in Wisconsin law clarifies that interest received from these types of bonds is subject to the Wisconsin income tax.

5. Legislator's Per Diem Exclusion Clarification (Amend 71.03 (2)(e), effective for 1982 taxable year and thereafter.)

The income exclusion for legislator's per diem payments received under s. 13.123 (1)(a) is clarified to provide that the exclusion applies if the person does not claim a deduction for travel expenses away from home on legislative days. For example, a legislator who received a per diem expense allowance of \$4,500 (\$30 per day for 150 days) during 1982 would be allowed to claim the \$4,500 as an exclusion under s. 71.03(2)(e) only if away from home travel expenses on legislative days were not claimed as a deduction in computing his or her Wisconsin taxable income.

CORPORATION FRANCHISE/INCOME TAXES

1. 10% Surtax for Tax Years 1982 and 1983 (Create 71.013, effective for taxable years 1982 and 1983 only.)

A surtax of 10% will be added to the franchise and income tax payable by corporations for the taxable years 1982 and 1983. The surtax will be computed on the basis of a corporation's gross tax, before reduction for any sales tax credit on fuel and electricity or farmland preservation credit claimed by the corporation.

The surtax will be required to be prepaid as estimated tax. For the year 1982, any portion of the surtax that would have been due as part of an installment payment of estimated tax required to be made before July 1, 1982 is to be prorated among and paid with the installments remaining due after that date.

2. Update Internal Revenue Code Reference to December 31, 1981 for Insurance Companies, Regulated Investment Companies and Real Estate Investment Trusts (Amend 71.01 (4)(g)5 and 71.02 (1)(a)6, create 71.01 (4)(g)6 and 71.02 (1)(a)7, effective for 1982 taxable year and thereafter, except the nonapplicability of safe-harbor leases is effective for the 1981 taxable year and thereafter.)

For the 1982 taxable year and thereafter, insurance companies, regulated investment companies and real estate investment trusts will compute their

taxable income under the Internal Revenue Code in effect on December 31, 1981, with one exception. The exception is that for the 1981 taxable year and thereafter the special rules for safe harbor leases provided by Section 168 (f)(8) of the Internal Revenue Code may not be used for Wisconsin purposes.

3. Utility Companies Must Use Provisions of Internal Revenue Code as of December 31, 1980 to Compute Depreciation for Depreciable Property Acquired During Taxable Years 1981 through 1983 (Amend 71.04 (15)(b), (e) and (f), create 71.04 (15)(bm), (em) and (fm), effective for taxable years 1981, 1982 and 1983.)

With respect to depreciable property acquired during taxable years 1981, 1982 and 1983, utility companies (telephone, telegraph, pipeline companies and light, heat and power companies furnishing gas, electricity, steam or hot water) must determine their depreciation expense for Wisconsin franchise/income tax purposes on the basis of the Internal Revenue Code provisions in effect on December 31, 1980. Depreciation provisions of federal law enacted after that date (e.g., the ACRS depreciation system enacted in 1981) may not be used to determine the amount of depreciation expense allowable on such property for Wisconsin purposes.

4. Federal Safe-Harbor Rules Not Applicable for Wisconsin (Amend 71.04 (15)(b), effective for taxable year 1981 and thereafter.)

Corporations will not be permitted to use the special rules for safe-harbor leases provided by Section 168 (f)(8) of the Internal Revenue Code. This change applies retroactively to 1981 as well as to 1982 and future taxable years.

5. Business Income Follows Situs of Business (Amend 71.07 (1m), effective for 1982 taxable year and thereafter.)

Under prior law, income or loss derived from rentals and royalties from real estate or tangible personal property, or from the operation of any farm, mine or quarry, or from the sale of real property or tangible personal property followed the situs of the property, except that gains or losses realized on disposals of real property or tangible personal property used in the production of business income followed the situs of the business. The new law, as amended in s. 71.07(1m), provides that only nonbusiness income or loss derived from rentals and royalties from real estate or tangible personal property or from the sale of real property or tangible personal property follows the situs of the property. All other income or loss, including income or loss from the sale or exchange of petroleum at the well-head, follows the situs of the business.

FARMLAND PRESERVATION CREDIT

1. First \$25,000 of Depreciation Expense Deductible in Computing Household Income (Amend 71.09 (11)(a)6.a and b, effective for claims filed for the 1982 taxable year and thereafter.)

For purposes of computing household income on a farmland preservation credit claim for 1982 and subsequent taxable years, a claimant (and each member of a claimant's household) will be limited to a deduction for depreciation expense of \$25,000. (Note: For the 1981 taxable year the limitation on depreciation expense deductions was \$20,000.)

INHERITANCE TAXES

1. Update Reference to Internal Revenue Code to December 31, 1981 for Qualified Retirement Plans, Installment Payments and Power of Appointment (Amend 72.01 (17), 72.12 (4)(c)1 and 72.22 (4)(a), effective for transfers because of death on or after July 1, 1982 except that the amendment to 72.01 (17) relating to power of appointment becomes effective May 1, 1982.)

The reference to the Internal Revenue Code relating to power of appointment in s. 72.01 (17), qualified retirement plans in s. 72.12 (4)(c)1 and installment payments in s. 72.22 (4)(a) is updated to December 31, 1981.

SALES AND USE TAXES

1. Tax Rate Increases From 4% to 5% on May 1, 1982 (Amend 77.52(1) and (2) (intro.) and 77.53(1), create 77.533, effective May 1, 1982.)

The Wisconsin sales and use tax rate increases from 4% to 5%, beginning May 1, 1982. The 5% tax applies to sales of tangible personal property and taxable services made on and after May 1, 1982, except for building materials made a part of real estate in fulfilling certain construction contracts as explained in item #2 below.

The bracket system to be used by retailers in collecting the 5% tax from their customers is as follows:

<u>Amount of Taxable Sale</u>	<u>5% Tax Collectible</u>
\$.01 to \$.09	\$.00
.10 to .29	1¢
.30 to .49	2¢
.50 to .69	3¢
.70 to .89	4¢
.90 to 1.09	5¢

On sales exceeding \$1.00, the tax is 5% of each full dollar plus the tax shown above for the applicable fractional part of a dollar. For example, the tax on a sale of \$5.50 is 28¢ (5% x \$5.00 = 25¢ plus 3¢ = 28¢).

(NOTE: If the April, 1982 special session Joint Resolution 1 is adopted by the 1981 Legislature and if that constitutional amendment is adopted by the 1983 Legislature on 2nd consideration and if the 1983 Legislature submits that constitutional amendment to the people for ratification at the spring election in April 1983, and if that constitutional amendment is ratified by the people, the rate of sales and use tax will continue to be 5% on and after July 1, 1983. If all of these conditions do not occur, the rate of sales and use tax beginning July 1, 1983 will be 4%.)

2. Construction Contracts Entered Into Before May 1, 1982 (Create 77.535, effective May 1, 1982.)

An increase in the rate of sales and use tax does not apply to building materials purchased by persons engaged in constructing, altering, repairing or improving real estate for others when the materials so purchased by those persons are affixed and made a structural part of real estate in the fulfillment of a written contract for a fixed price not subject to change or modification, or to a formal written bid that cannot be altered or withdrawn, if the contract is entered into or the bid is made before the effective date of the sales and use tax rate increase.

This new provision in s. 77.535 means that the sales and use tax rate continues to be 4% (rather than 5%) on building materials purchased on or after May 1, 1982 if the following 2 conditions are met:

1. The buyer of the building materials entered into a written contract or made a formal written bid before May 1, 1982 to construct, alter, repair or improve real estate for another person. The written contract is for a fixed price that cannot be changed or the formal written bid cannot be altered or withdrawn.
2. The building materials purchased on or after May 1, 1982 are affixed and made a part of real estate in fulfilling such a written contract or formal written bid.

A seller should not sell building materials on or after May 1, 1982 at the 4% rate unless the seller first obtains from the buyer a completed form entitled, "Construction Contract Entered Into Before May 1, 1982". This form may be obtained from any department office.

3. Tax Interstate Telegraph and Telephone Services (Amend 77.52(2)(a)3 and 4, effective for such services sold, performed or furnished on or after May 1, 1982.)

Interstate telephone service which originates from and is charged to a telephone located in Wisconsin is taxable, beginning May 1, 1982. Interstate telegraph service is also taxable, beginning May 1, 1982.

(Note: See item #5 below for a description of the taxation of interstate telephone and telegraph services provided under contracts entered into before May 1, 1982.)

4. Tax Landscaping and Lawn Maintenance Services (Create 77.52(2)(a)20, effective for services sold, performed or furnished on or after May 1, 1982.)

Landscaping and lawn maintenance services, including landscaping planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services are taxable, beginning May 1, 1982. (Note: See item #5 below for a description of landscaping and lawn maintenance services provided under a written contract entered into before May 1, 1982.)

5. Exemption for Previously Exempt Service or Property Furnished Under Contract (Create 77.54(18), repeal 77.54(19), effective May 1, 1982.)

Under s.77.54 (18), when the sale, lease or rental of a service or property that was previously exempt from sales and use tax becomes taxable, and the service or property is furnished under a written contract by which the seller is unconditionally obligated to provide the service or property for the amount fixed under the contract, the seller is exempt from sales or use tax on the gross receipts for services or property provided until the contract is terminated, extended, renewed or modified. However, from the time the service or property becomes taxable until the contract is terminated, extended, renewed or modified, the user (purchaser) is subject to use tax, measured by the sales price, on the service or property purchased under the contract.

(NOTE: If interstate telephone and telegraph services or landscaping and lawn maintenance services (items 3 and 4 above) are furnished under a written contract entered into before May 1, 1982, and the seller is unconditionally obligated to provide the services for the amount fixed in the contract, the seller is exempt from sales or use tax on the services until the contract is terminated, extended, renewed or modified.

From the time these services became taxable on May 1, 1982 until the contract is terminated, extended, renewed or modified, the purchaser must pay use tax to the department on the services purchased under the contract.

The seller may as a convenience to a purchaser, and with the purchaser's approval, collect the 5% tax from the purchaser and remit the tax to the department. If this occurs, the purchaser will not be required to report this use tax on a return and remit the tax to the Department of Revenue.)

EXCISE TAXES

1. Cigarette Tax Increased to 25¢ per Pack (Amend 139.31 (1)(a) and (b), effective May 1, 1982.)

The tax rate for cigarettes will increase from 20¢ to 25¢ per pack on May 1, 1982. A floor tax of 5¢ per pack will be imposed on the tax paid inventory of cigarettes in the possession of retailers and distributor, jobber, multiple retailer and vending machine operator permittees on May 1, 1982.

This tax of 25¢ per pack will be in effect from May 1, 1982 to September 30, 1983. Beginning October 1, 1983, the tax will be 20¢ per pack.

2. Cigarette Inventory Tax Procedures (Create 139.315, repeal 139.31 (2), amend 73.01 (4)(a), effective July 1, 1983.)

This provision specifies which persons are liable for the cigarette inventory tax (floor tax), how to compute the inventory tax, the due date for filing a return and paying the tax, the \$10 late filing fee to be applied to late filed returns, the application of 1.5% per month delinquent interest on late tax payments and the penalty for filing false or fraudulent returns.

The language created in s. 139.315 (3) relating to refund claims, audits, collection of tax, appeals, etc. is identical to the language repealed in s. 139.31 (2).

3. Tax Increase on Alcohol Manufactured or Distilled From Brewing Wastes (Amend 139.03 (2t)(intro.), create 139.03 (2w), Section 2045 (1) - a nonstatutory provision, effective June 1, 1982.)

The liquor tax on alcohol manufactured or distilled in Wisconsin from brewing wastes that are produced in Wisconsin will increase from \$1.00 per gallon to \$2.25 per gallon for the period June 1, 1982 through May 31, 1983. On June 1, 1983 the rate will become \$3.25 per gallon. (Note: Retailers defined in s.139.01 (8) will not be subject to a floor tax on their June 1, 1982 and June 1, 1983 inventories of this type of liquor. However, manufacturers, rectifiers and wholesalers will be subject to a floor tax on their June 1, 1982 and June 1, 1983 inventories of this type of liquor on which the previous rate of tax has already been imposed.)

4. Floor Tax Procedure for Liquor (Create 139.03 (2x), effective May 1, 1982.)

This new provision in s. 139.03 (2x) specifies which persons are liable for the floor tax, how to compute the floor tax, the due date for filing a return and paying the tax, the \$10 late filing fee to be applied to late filed returns, the application of 1.5% per month delinquent interest on late tax payments and the penalty for filing false or fraudulent returns. The income tax administrative provisions in s. 71.10 (10)(d) to (g), 71.11 (16), (17), (19), (20), (22) and (23), 71.12 to 71.135, 73.01 and 73.015 relating to refund claims, audits, collection of taxes, appeals, etc. will also apply to the liquor floor tax.

OTHER

1. Require Nonresident Entertainers and Public Speakers to File a Bond or Post Security (Amend 71.02 (2)(p), 71.10 (18)(a)(intro.), 71.19 (1)(intro.), (3) and (4)(intro.) and (a), create 71.04 (12)(f), 71.05 (1)(a)15, 71.10 (18)(am), 71.135 (7), 71.19 (4)(b), 71.20 (23) and (24), effective January 1, 1983.)

Nonresident entertainers and public speakers will be required to file a bond or place a security deposit with the Department of Revenue at least two days prior to the date of a performance. The amount deposited would equal 6% of the total performance contract price which is in excess of \$3,200.

Also, a person who employs a nonresident entertainer will be required to show proof that a bond or security deposit was filed with the Department of Revenue. If the bond or deposit was not filed, the employer may deduct a portion of the entertainer's pay as an amount withheld for state income tax purposes. Employers who fail to follow this procedure would be subject to two penalties: (1) the employer would be personally liable for the amount of security which should have been filed; and (2) the employer would not be allowed to deduct amounts paid to the entertainer as a business expense.

An employer would not be subject to penalties under these provisions if: (1) it withholds the proper amount based upon a signed statement of the promotion agency or entertainer; and (2) the statement is sent to the Department of Revenue within thirty days after the performance.

Every employer, including the State of Wisconsin and its political subdivisions, of an entertainer or entertainment corporation which performs in Wisconsin shall furnish a completed Form 9c to the Department of Revenue within 90 days of the performance if the contract price for the performance exceeds \$3,200.

2. Property Tax Deferral Program Changes (Amend 77.63, 77.64(1), 77.655, 77.66(1), (2), (4)(b), (5) and (10), repeal 77.66(4)(a), repeal and recreate 77.66(9), effective May 1, 1982.)

The department may allow co-owners to be added to the loan agreement if, in the judgment of the Secretary of Revenue, the addition of co-owners does not significantly increase the program's exposure to risk under the loan agreement. Various other changes were also made to the provisions relating to the property tax deferral program. (Note: The qualifications for obtaining a loan under the property tax deferral program are explained in Wisconsin Tax Bulletin #24 dated August 7, 1981.)